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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,676	07/14/2003	Frederic Legrand	05725.1227-00	4116

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EXAMINER	
AHMED, HASAN SYED	
ART UNIT	**PAPER NUMBER**
1615	

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/617,676	LEGRAND	
	Examiner	Art Unit	
	Hasan S. Ahmed	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 July 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-32* is/are pending in the application.

4a) Of the above claim(s) *23-32* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/14/03, 8/11/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of applicants': (1) Response to Restriction Requirement filed on 27 July 2006; and (2) Information Disclosure Statements filed on 14 July 2003 and 11 August 2006.

Election/Restrictions

Applicant's election with traverse of Group I (claims 1-22) in the reply filed on 27 July 2006 is acknowledged. The traversal is on the ground that an examination of all original claims presented does not present a serious burden on the Examiner. This is not found persuasive because elements in Groups II-IV exist which require searches in areas not required for Group I.

The requirement is still deemed proper and is therefore made FINAL.

Claims 23-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected groups, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in the reply filed on 27 July 2006.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (U.S. Patent No. 6,540,791) in view of Legrand, et. al. (U.S. Patent No. 6,260,556), further in view of Caes, et. al. (U.S. Patent No. 6,423,306).

Dias teaches a hair bleaching composition and a method of making a hair bleaching composition comprising the polydecene of instant claims 1, 3-5, 18, and 21 (*see* col. 23, line 12), the nonionic amphiphilic polymers of instant claim 16 (*see* col.15, lines 37-48), the peroxygentated salt (perborate) of instant claim 10, the alkaline agent (ammonium salts) of instant claims 13 and 14, and the surfactants of instant claim 17 (*see* col. 9, lines 52-59). The composition may be in the paste form of instant claims 1, 18, and 21 (*see* col. 49, line 36).

Dias explains that by combining the disclosed ingredients into one composition, "...stable hair bleaching and/or coloring compositions can be made which are safe and effective for use on mammalian hair and which provide ... (increased) shelf-life and bleaching effect benefits..." *See* col. 3, lines 34-38.

The Dias reference differs from the instant application in that it does not disclose the particular peroxygenated salts of instant claim 11 or the hydrogen peroxide of instant claims 21 and 22.

Legrand, et. al. teach anhydrous compositions for bleaching keratin fibers (*see* col. 1, lines 1-13). The disclosed composition consists of, *inter alia*, the sodium persulphate of instant claim 11 (*see* col. 17, line 6), and hydrogen peroxide (see col. 1, line 19).

The Dias reference differs from the instant application in that it does not disclose the polydecene of claims 1, 3, 18, and 20-22, in which at least 30 carbon atoms are presented in the claimed formula.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition by incorporating a polydecene compound having at least 30 carbon atoms because the Dias reference teaches clearly that polydecene compounds having more than 19 carbon atoms can be used in the composition (*see* col. 23, lines 1-12). Thus, a person of ordinary skill in the art would be motivated to use hydrocarbon polymers having more than 19 carbon atoms, including those claimed, and would expect such a composition to have similar properties to those claimed, absent unexpected results.

The Dias reference differs from the instant application in that it does not disclose the gelling agent of instant claims 1, 6-9, 18, 21 and 22.

Caes, et. al. teach cosmetic compositions for use on hair, including pastes (*see* col. 5, line 60; col. 6, lines 30-39).

The disclosed composition consists of the gelling agent of instant claims 1, 6-9, 18, 21 and 22, including the particular hydrogenated block copolymers of instant claim 9.

Caes, et. al. explain that use of multi-block copolymers in a cosmetic composition provides the benefits of, "...very good adherence to the substrate, flexibility, wearability, good dry time, non tacky, good retention, non transfer, and low migration over time." *See* col. 1, lines 53-56.

While the Dias reference does not explicitly teach all the instant claimed percentages of agents, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine suitable percentages through routine or manipulative experimentation to obtain the best possible results, as these are variable parameters attainable within the art.

Moreover, generally, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456; 105 USPQ 233, 235 (CCPA 1955). Applicants have not demonstrated any unexpected or unusual results, which accrue from the instant percentage ranges.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to make an anhydrous paste comprising a peroxygenated salt, an alkaline agent, a polydecene, and a gelling agent, as taught by Dias in view of Legrand, et. al., further in view of Caes, et. al.

One of ordinary skill in the art at the time the invention was made would have been motivated to make an anhydrous paste comprising a peroxygenated salt, an alkaline agent, a polydecene, and a gelling agent for the beneficial effects of stable hair bleaching and/or coloring compositions which are safe and effective for use on mammalian hair and which provide increased shelf-life and bleaching effect benefits, as well as very good adherence to the substrate, flexibility, wearability, good dry time, non

tacky, good retention, non transfer, and low migration over time, as explained by Legrand, et. al. and Caes, et. al.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-22 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-47 of U.S. Patent No. 6,260,556 ('556) in view of Legrand, et. al. (U.S. Patent No. 6,260,556), further in view of Caes, et. al. (U.S. Patent No. 6,423,306). Although the conflicting claims are not identical, they are not patentably distinct from each other because '556 claims an anhydrous composition for bleaching keratin fibers comprising at least one alkaline agent, at least one peroxygenated salt, at least one amphiphilic polymer (*see* claim 1), and an adjuvant (*see* claim 37).

'556 differs from the instant application in that it does not claim a polydecene or a gelling agent. However, Dias teaches a composition for bleaching keratin fibers comprising, *inter alia*, a polydecene. Furthermore, Caes, et. al. teach a composition for bleaching keratin fibers comprising a gelling agent.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a polydecene and a gelling agent to the composition of '556.

One of ordinary skill in the art at the time the invention was made would have been motivated to add a polydecene and a gelling agent to the composition of '556 for the beneficial effects of stable hair bleaching and/or coloring compositions which are safe and effective for use on mammalian hair and which provide increased shelf-life and bleaching effect benefits, as well as very good adherence to the substrate, flexibility, wearability, good dry time, non tacky, good retention, non transfer, and low migration over time, as explained in '556 and by Caes, et. al.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hasan S. Ahmed whose telephone number is 571-272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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